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# HARVARD LAW REVIEW.

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Published monthly, during the Academic Year, by Harvard Law Students.

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SUBSCRIPTION PRICE, \$2.50 PER ANNUM . . . . . 35 CENTS PER NUMBER.

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WITH the enrolment of each new class in the Law School, attention is forcibly called to the anomaly of requiring a bachelor's degree for admission, and granting only a degree of the same nature at the end of the three years course. It is hard to see any reason for discriminating between certain other graduate departments of the University and the Law School, which maintains an admittedly equivalent standard. And, as has been well said, "If the standards of a professional school are so high that graduation means the successful completion of a collegiate as well as a professional course, it is for the interest of the University to emphasize this high standard by a degree which from its form suggests that it is a second degree."

Several other law schools, including those at Stanford and Chicago universities, have already recognized the force of this reasoning. Men who have pursued three years of study in the Law School after earning a college degree ought, in justice to themselves and to the University, to be given the degree of *Furis Doctor*, or its equivalent.

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THE LAW SCHOOL. — As usual there are a number of changes to be recorded. Professor Strobel and Assistant Professor Westengard are still on leave of absence in Siam. Mr. E. H. Warren, LL.B. 1900, who has been appointed an assistant professor, has taken Judge Smith's course on Corporations, and will assist Professor Beale in second year Property. As Mr. W. R. Peabody has not returned, Professor Beale will have Criminal Law alone this year. He has also consented to give the course on International Law, which it was at first planned to omit. The second year course in Equity, given by Dean Ames last year, has been taken by Assistant Professor Warren, and the Dean has resumed Equity III, which

he will give as a half course in the first half year. He will also give Pleading, or Civil Procedure at Common Law, as it is officially called, two hours a week in the second half year, and is preparing a new case book on the subject. Professor Gray continues to give his courses in third year Property and in Evidence, but has relinquished Constitutional Law, which will be conducted by Professor Wambaugh as a half course, one hour a week. Professor Wambaugh's course on Insurance will be given by Mr. Samuel Hudson Hollis, LL.B. 1901, and Admiralty by Mr. Clarence H. Olson, LL.B. 1904. Both Mr. Hollis and Mr. Olson are former editors of the REVIEW. The course on Civil Procedure under the New York Code is announced, but it is still undecided who will conduct it. Quasi-Contracts will be omitted. Assistant Professor Wyman, who continues to give Carriers and Suretyship, has promised six lectures on "International Relations—Special Topics in the Law of Peace and War." The rest of the curriculum is the same as that of last year.

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ENTRIES MADE BY A PERSON OTHER THAN THE ORIGINAL OBSERVER. — When a book is composed of entries made by a clerk from his personal observation, it can readily be used in evidence. If the clerk is alive he can testify to the transactions, using the book to refresh his recollection.<sup>1</sup> If he is dead the book itself is admissible as an entry made in the course of duty.<sup>2</sup> But in the course of modern business entries are seldom made by one person, being usually the result of the co-operation of two or even more. A typical case is where a foreman makes reports of transactions coming under his observation, and a clerk or book-keeper enters them in a day book. Where both these parties are alive and can testify, such a book can generally be used as evidence, the common practice being to allow the book itself to go to the jury upon their sworn testimony that the transactions were correctly observed and accurately copied.<sup>3</sup>

The difficult question arises when the original observer is not in court to testify to the correctness of his reports. Under these circumstances there is considerable conflict in regard to the admission of the book. Some courts refuse to admit the evidence at all.<sup>4</sup> If, however, as is often the case, the person who reported the transaction is dead, there would seem to be no objection to admitting his report as an original declaration made by him in the course of duty, for the fact that the report first took permanent form at the hands of the book-keeper should not destroy its trustworthiness when the latter is present to testify to the correctness of his copy.<sup>5</sup> The same should be true when the original observer is outside the jurisdiction, or for any other reason unavailable. Since the ground for admitting declarations in the course of duty, apart from the probability of their truth, is the impossibility of obtaining the testimony of the witness himself, it would seem of no consequence whether this impossibility is the result of death or other circumstances over which the parties have equally

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<sup>1</sup> Greenl. Evid. 16th ed. § 439 a.

<sup>2</sup> *Nichols v. Webb*, 8 Wheat. (U. S.) 326.

<sup>3</sup> *Mayor of New York v. Second Ave. R. R. Co.*, 102 N. Y. 576; *Hurley v. Macey*, 87 N. Y. Supp. 924.

<sup>4</sup> *Kent v. Garvin*, 1 Gray (Mass.) 148.

<sup>5</sup> Greenl. Evid. 16th ed. § 120 a.